

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION

NBA Properties, Inc.,  
a New York Corporation, and  
National Football League  
Properties, Inc.,  
a California Corporation,

PLAINTIFFS,

v.

Dahlonga Mint, Inc.,  
a Georgia Corporation, d/b/a  
Chattanooga Coin & Sportscards,  
Chattanooga Coin Co., Chattanooga  
Coin, DM Inc., and DM Corp.,  
Lewis Revels, an individual,  
and Mary Revels, an individual,

DEFENDANTS.

CIVIL ACTION FILE  
NO. 4:97-CV-0208-HLM

FILED IN CLERK'S OFFICE  
U.S.D.C. - Rome

APR 2 1999

LUTHER D. THOMAS, Clerk  
By: *V. Vandendyke*  
Deputy Clerk

ORDER

This is a trademark infringement and unfair competition case in which Plaintiffs claim that Defendants sold sports trading cards that infringe on Plaintiffs' trademarks. The case proceeded to a bench trial that commenced on February 3, 1999. The parties finished presenting evidence on February 8, 1999, and made their final arguments on February 18, 1999. Both parties have filed Proposed Findings of Fact and Conclusions of Law, and the case now is ready for final disposition.

## I. Procedural Background and Summary of Claims

Defendants are merchants who sell collectible coins and sports cards. Since the early 1990s, Defendants have sold sports cards depicting professional athletes. Plaintiffs own and exploit intellectual property rights on behalf of professional sports leagues. Plaintiff National Football League Properties, Inc., licenses the National Football League's trademarks to sports card manufacturers and retailers. Plaintiff NBA Properties, Inc., licenses the National Basketball League's trademarks to sports card manufacturers and retailers. Plaintiffs also enforce the trademarks of their respective professional sports leagues.

On July 2, 1997, Plaintiffs filed this lawsuit. Plaintiffs assert the following causes of action: (1) trademark infringement and unfair competition under sections 32 and 43(a) of the Lanham Act, 15 U.S.C.A. §§ 1114, 1125(a); (2) counterfeiting under section 34(d)(1)(B) of the Lanham Act, 15 U.S.C.A. § 1116(d)(1)(B); (3) federal trademark dilution; (4) state trademark dilution; (5) injury to business reputation under section 43(c) of the Lanham Act, 15 U.S.C.A. § 1125(c), and under O.C.G.A. § 10-1-451(b); (6) trademark infringement and unfair competition under Georgia common law; and (7) deceptive trade practices under the Georgia Uniform Deceptive Trade Practices Act, O.C.G.A. § 10-1-370 et seq.

Plaintiffs allege that Defendants sold 120 sports card designs that infringe on Plaintiffs' trademarks and that Defendants knowingly did so. Plaintiffs also allege that by intentionally infringing on Plaintiffs' trademarks, Defendants counterfeited those trademarks. Defendants stipulated liability on Plaintiff's trademark infringement claims with respect to sixty-seven designs that portray professional athletes wearing team uniforms complete with team names and logos. Defendants contest liability with respect to the remaining fifty-three sports card designs that depict professional athletes in team uniforms with the team names and logos removed or in "USA Basketball" uniforms. Defendants also contest liability with respect to Plaintiffs' counterfeiting claims for all 120 sports card designs.

On February 5, 1998, Plaintiffs filed their Motion for Summary Judgment. On June 3, 1998, the Court denied in part and granted in part Plaintiffs' Motion for Summary Judgment. The Court granted summary judgment to Plaintiffs for each of Plaintiffs' claims with respect to the sixty-seven uncontested sports card designs. The Court denied summary judgment with respect to the fifty-three contested sports card designs.

On December 21, 1998, the Court conducted a status conference in an attempt to move this case toward trial. During the conference, the Court granted Defendants' request

to reopen the issue whether Defendants' stipulation of liability with respect to the sixty-seven uncontested sports card designs applied to Plaintiffs' counterfeiting claims. Stated differently, the Court permitted Defendants to argue at trial that Defendants did not intentionally infringe on Plaintiffs' trademarks and thus did not counterfeit Plaintiff's trademarks with respect to all 120 sports card designs.

At trial, Plaintiffs argued that Plaintiffs possess protectible marks in: (1) the team uniform designs complete with team names and logos; (2) the team uniform designs without the team names and logos; and (3) the team colors. Plaintiffs argued that Defendants' sale of all 120 designs infringes on each of Plaintiffs' protectible trademarks. Plaintiffs also argued that Defendants knew that they were infringing on Plaintiffs' trademarks by selling all 120 sports card designs, and thus counterfeited the designs.

Defendants argued at trial that they were unaware that they were infringing on Plaintiffs' trademarks when they sold the sports card designs at issue. Defendants thus argued that they did not counterfeit any of Plaintiffs' trademarks. Defendants also argued that they did not infringe on Plaintiffs' trademarks by selling the fifty-three contested designs, although Defendants conceded that they infringed on

Plaintiffs' trademarks by selling the sixty-seven uncontested designs.

## II. Findings of Fact

### A. The Parties

1. Plaintiff NBA Properties, Inc. ("Plaintiff NBA") is a New York corporation engaged in the business of exploiting the trademarks owned by the teams that constitute the National Basketball Association ("NBA"). (Tr. at 213-15.)

2. Plaintiff NBA's contracts with the individual NBA teams give Plaintiff NBA the exclusive right to exploit the trademarks owned by the NBA Teams (the "NBA Team Marks"). (Tr. at 216.) These licenses cover all "Symbols," which the contracts define as "names, emblems, insignia, symbols, designs, colors, and other identifying marks of the teams." (Tr. at 216; Pls.' Ex. 236 (Lakers agreement).)

3. Plaintiff National Football League Properties, Inc. ("Plaintiff NFL") is a California corporation with its principal place of business located in New York ("Plaintiff NFL"). (Tr. at 172.) Plaintiff NFL is engaged in the business of exploiting the trademarks owned by the teams that constitute the National Football League ("NFL"). (Id.); National Football League Properties, Inc. v. Wichita Falls Sportswear, Inc., 532 F. Supp. 651, 655 (W.D. Wash. 1982).

4. Defendant Dahlonga Mint, Inc. ("Defendant Dahlonga") is a Georgia corporation engaged in the business of selling collectible coins and sports memorabilia. (Tr. at 609-10.) Defendant Dahlonga operates under a variety of trade names, including: Dahlonga Mint; Chattanooga Coin & Sportscards; Chattanooga Coin Co.; Chattanooga Coin; Dahlonga Mint, Inc.; DM, Inc.; DM Corporation; and Choo-Choo Printing. (Tr. at 609-10, 651; Pls.' Ex. 167 (Answer No. 8).) Defendant Dahlonga maintains its principal place of business in Rossville, Georgia. (Tr. at 609-10.)

5. Defendant Lewis Revels is the owner and operator of Defendant Dahlonga. (Tr. at 601-03.) Defendant Revels approves all the trading card purchasing decisions for Defendants. (Tr. at 376, 652-52; Pls.' Ex. 48 (Answer No. 11).) Defendant Revels decided to purchase the particular trading cards at issue in this case. (Tr. at 376, 407-08, 652-52; Pls.' Ex. 48 (Answer No. 11).) Defendant Revels had personal responsibility for choosing the cards that Defendants sold in their monthly club sets. (Tr. at 375.) Defendant Revels also supervises the production of a publication entitled The Coin & Sportscard Wholesaler, Defendants' primary medium for selling sports trading cards. (Id. at 653.)

B. Plaintiffs' Trademarks

1. Plaintiff NBA's Trademarks

6. Plaintiff NBA claims ownership of the following trademarks or "NBA Team Marks":

- (a) full team names (e.g., CHICAGO BULLS, ORLANDO MAGIC);
- (b) team nicknames (e.g., LAKERS, HAWKS, HORNETS);
- (c) game uniform designs, i.e., the overall look and feel of the team uniforms, absent specific words or insignias (e.g., the Orlando Magic pinstripes);
- (d) team colors in a context indicative of professional basketball (e.g., the Lakers' "Purple and Gold"); and
- (e) other identifying names, symbols, designs and slogans (e.g., the Chicago Bulls' "Bull's Head" logo).

Plaintiff NBA's Senior Vice-President of Business Affairs, Harvey Benjamin, testified that Plaintiff NBA "has the exclusive license to use and sublicense others to use all of the intellectual property of the N.B.A. teams. That would include trademarks, colors, logos, uniform designs, every kind of protectible intellectual property owned by the teams." (Tr. at 215.)

7. Plaintiff NBA registers only some of its trademarks and relies on its common law rights to protect its remaining trademarks. (Tr. at 297-98 ("We simply can't, as a matter of business, register every single mark in every category").)

8. Plaintiff NBA registered some of its "Team Marks" with the United States Patent and Trademark Office ("PTO")

pursuant to the Lanham Act ("the NBA Team Registered Marks").  
(Tr. at 295-98; Pls.' Exs. 1-7.) Plaintiff NBA registers its  
marks for the following classes of goods and services:

- (a) entertainment services in the nature of basketball  
games in International Class 41; and
- (b) paper and printed goods, including trading cards in  
International Class 16.

(Tr. at 295-98; Pls.' Exs. 1-7.)

9. The following Federal registrations for Plaintiff  
NBA's "Team Marks" cover trading cards:

- (a) ATLANTA HAWKS (Reg. No. 1,944,277) (Pls.' Ex. 1);
- (b) CHICAGO BULLS & Design (Reg. No. 1,996,894) (Pls.'  
Ex. 2); and
- (c) ORLANDO MAGIC & Design (Reg. No. 1,985,838) (Pls.'  
Ex. 3).

10. In 1996, Plaintiff NBA registered as trade dress the  
following game uniform designs without the team names and  
logos:

- (a) Chicago Bulls (Reg. No. 2,020,341) (Pls.' Ex. 4);
- (b) New York Knicks (Reg. No. 2,015,037) (Pls.' Ex. 5);
- (c) Orlando Magic (Reg. No. 2,023,115 (Pls.' Ex. 6); and
- (d) Phoenix Suns (Reg. No. 2,076,766) (Pls.' Ex. 7).

(Tr. at 293.) The PTO issued each registration under Section  
2(f) of the Lanham Act only for International Class 41, which  
is a class of goods composed of entertainment services in the  
nature of professional basketball games. (Tr. at 296; Pls.' Exs. 1-7.)



Ex. 4-7.).

11. Plaintiff NBA registered its NBA Team game uniform designs in order to protect better its trademark rights internationally. (Tr. at 295.)

12. Plaintiff NBA grants licenses to third parties to reproduce the NBA Team Marks. (Tr. at 222.) Between 275 and 300 licensees currently pay Plaintiff NBA for the right to reproduce the NBA Team Marks. (Id.)

13. Plaintiff NBA receives substantial income from the sales of its licensed products in the United States and worldwide. (Tr. at 223.) Since 1993, Plaintiff NBA's annual domestic gross retail sales of licensed products have exceeded \$3 billion. (Tr. at 223; see also Pls.' Ex. 227 (sales summary).)

14. Since 1992, Plaintiff NBA has licensed the following companies to place the NBA Team Marks on sports trading cards:

- (a) Fleer Corp.;
- (b) Skybox Int'l, Inc.;
- (c) The Topps Company; and
- (d) The Upper Deck Company.

(Tr. at 222, 259.)<sup>1</sup> These licensees pay a lump sum of money to Plaintiff NBA upon execution of the contract, and also pay

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<sup>1</sup> At one time, Plaintiff NBA also licensed LBC Sports, Inc. to produce a "Hall of Fame" series of NBA trading cards. (Tr. at 259.)

royalties ranging from 16 percent to 22 percent for the right to place Plaintiff NBA's NBA Team Marks on sports trading cards. (Id. at 263.) Plaintiff NBA maintains a relatively small number of licensees to enable it to manage better its "quality control procedure" and to enhance public awareness of the "official NBA licensees." (Id. at 259.)

15. Plaintiff NBA receives substantial income from sales of its licensed trading cards. (Tr. at 271.) Plaintiff NBA received an average of over \$200 million in annual sales for the fiscal years 1994 through 1997. (Tr. at 239-241; Pls.' Ex. 227.) Specifically, Plaintiff NBA received the following income for annual sales:

1994	\$245,487,467
1995	\$237,798,301
1996	\$164,939,376
1997	\$154,196,333

(Tr. at 239-241; Pls.' Ex. 227.)

16. Plaintiff NBA does not measure sales of trading cards by team or by player. (Tr. at 271.) The specific teams that are relevant to this case, however, are among the most popular franchises in the NBA with respect to sales of other licensed products for which Plaintiff NBA measures sales by team and player. (Id.; Pls.' Ex. 227.)

a. For example, the Chicago Bulls sold more licensed products than any other team in recent years. (Tr. at 271; Pls.' Ex. 227.) The Bulls sold more than \$568 million worth

of licensed merchandise between 1994 and 1997. (Pls.' Ex. 227.) Since 1994, Michael Jordan has sold more replica uniforms than any other player. (Id.) For example, Michael Jordan sold \$19.1 million worth of replica uniforms in 1997. (Id.)

b. In 1994 and 1995, the Orlando Magic sold more licensed products than all except two other teams. (Pls.' Ex. 227.) In 1996 and 1997, the Orlando Magic sold more licensed products than all except one other team. (Id.) For three of these four years, the Magic sold more than \$75 million in merchandise. (Id.) In 1994, Shaquille O'Neal sold more replica jerseys than any other player. (Id.) In 1995, Shaquille O'Neal sold more replica jerseys than all except one other player. (Id.) In 1996, Shaquille O'Neal sold more replica jerseys than all except two players. (Id.) Shaquille O'Neal sold more than \$6 million worth of replica jerseys per year for the period of 1994 through 1997. (Id.)

c. From fiscal year 1994 through fiscal year 1997, domestic wholesale sales of products bearing Lakers-related marks totaled over \$52 million. (Pls.' Ex. 227.) In the same time span, products bearing Celtics marks sold over \$22 million. (Id.)

d. The Phoenix Suns' merchandise sales totaled over \$124 million between 1994 and 1997. (Pls.' Ex. 227.) The New York

Knicks' merchandise sales totaled over \$67 million over the same period. (Id.) The Miami Heat and Dallas Mavericks had more than \$12 million and \$20 million, respectively, in sales of merchandise between fiscal years 1994 and 1997. (Id.)

17. Plaintiff NBA's trading card licenses include uniform designs and colors. (Tr. at 263; Pls.' Ex. 172 (licenses).)

18. Plaintiff NBA's licensees typically "produce several lines" of cards each year, which sell at different price levels. (Tr. at 270-71.) The prices vary from \$1.29 to \$5. (Id. at 271.) Merchants sell licensed cards through retail stores, hobby stores, television shopping networks, magazine advertisements, and direct mail solicitations. (Id. at 272.)

19. Consumers purchase licensed products for different reasons. (Tr. at 224.) Donna Goldsmith, Plaintiff NBA's Vice President of Non-Apparel Licensing, testified that some consumers want to identify with a particular team or player. (Id.) She also testified that other consumers purchase the items because of the items' value as collectibles. (Id.) This type of consumer wants the "higher value and authenticity" associated with Plaintiff NBA's licensed trading cards. (Id. at 224-25.)

20. A wide variety exists in the types of consumers who purchase Plaintiff NBA's licensed trading cards. (Tr. at

272.) Ms. Goldsmith testified that "[t]here's definitely no typical consumer." (Id.) Customers vary in age from children to grandparents, and possess all levels of knowledge and sophistication. (Id.) "There's a different audience for every kind of trading card." (Id. at 270.)

21. Plaintiff NBA strictly controls the quality of its licensed products, including trading cards. (Tr. at 242, 259, 265.) Plaintiff NBA reviews each trading card's composition, layout, copy, statistics, photographs, design, boxes, packaging, advertising, and promotion. (Id. at 265-67.) Plaintiff NBA emphasizes quality control in order to enhance the image of the NBA and Plaintiff NBA licensed products. (Id. at 265.)

22. Plaintiff NBA spends between \$5 million and \$10 million per year marketing the NBA Team Marks:

1994	\$ 5,592,410
1995	\$ 9,658,597
1996	\$ 8,585,547
1997	\$10,091,954

(Tr. at 240; Pls.' Ex. 227.)

23. Plaintiff NBA's licensees spend about \$40 to \$50 million per year marketing Plaintiff NBA's licensed products. (Tr. at 240.)

24. Plaintiff NBA tries to generate publicity for its trademarks in order to increase their economic value. (Tr. at 216-17.) Mr. Benjamin, Plaintiff NBA's Senior Vice-President

of Business Affairs, testified, "we very much want to keep our colors and our logos and all of our other intellectual property out in front of the public so that they continue to make an identification with our sport and our teams, and so we're in the wonderful position of people paying us a lot of money to do a great deal of publicity by showing people our marks." (Id.)

25. Mr. Benjamin believes that fans "recognize clearly the logos and the colors of the team, particularly if it's in some context that relates to professional basketball. A fan will automatically just in his or her mind associate the team colors with the team." (Tr. at 225.) Plaintiff NBA tries to facilitate this association. (Id.) Mr. Benjamin stated, "One of the key elements of the announcement of a new team is the announcement and showing of the team's uniform and logo." (Id.)

26. Plaintiff NBA creates the logos for the NBA All-Star Game and for the NBA annual draft in the "team colors" of the host city. (Tr. at 232-33; Pls.' Ex. 234.)

27. The NBA recently created the WNBA, which is a women's professional basketball league. (Tr. at 227-28.) The NBA attempts to associate each NBA team with the new WNBA team in the same city. (Id.) To accomplish this, the NBA used the team colors for each city's NBA team as the predominant team

colors for the city's WNBA team. (Id.; Pls.' Ex. 231.)

28. Plaintiff NBA requires licensees to manipulate player photographs to insert team colors if the colors are lacking in the original photograph. (Tr. at 268-69.)

29. Plaintiff NBA licensed trading cards typically depict players in their NBA team uniforms and colors. (Tr. at 267-68.) Plaintiff NBA encourages licensees to portray players in their uniforms on trading cards. (Id.) Plaintiff NBA would not approve a trading card depicting a player in a uniform with colors other than the team colors of the player's team. (Id. at 268.)

30. A product featuring a player's name without the player's team colors would not sell as well as the same product that featured the player's team colors. (Tr. at 255.) For instance, a shirt featuring Michael Jordan's name and number, but lacking the Chicago Bulls' team colors, would not sell as well as a shirt featuring Michael Jordan's name, number, and the Chicago Bulls' team colors. (Id.)

31. The media associates NBA teams with the NBA teams' "team colors." (Tr. at 234 ("Celtic Green, purple and gold of the Lakers, teal and purple with respect to Charlotte").) The following articles associate NBA teams with their team colors:

a. Chicago Bulls - "red and black" (Pls.' Ex. 12)

"obscured by the red-and-black finery of the Chicago Bulls." (Sports Illustrated, May 18, 1992);

"An estimated 150,000 fans - most dressed in the black and red of their favorite NBA team - turned out" (USA Today, June 17, 1992); "wearing a black Chicago Bulls cap, a Jordan sweatshirt, black Jordan pants, black-and-red Jordan socks and black-and-red Air Jordan sneakers." (The New York Times, July 25, 1992); "Bill Murray, who wore Bulls' black and red, bless his rumpled wardrobe." (Chicago Tribune, June 3, 1993); "then at the very least they should wear the colors of the two-time NBA champions - red and black." (Chicago Tribune, June 11, 1993); "A sea of red-and-black clad fans cheered and waved today at a downtown rally for the NBA champion Chicago Bulls" (The Associated Press, June 22, 1993, PM cycle); "History had arrived, and it was wearing the black and red of the Chicago Bulls." (Chicago Tribune, June 24, 1993); "Children clad in red and black Chicago Bulls t-shirts and caps filled a room" (Chicago Tribune, April 26, 1994); "Dressed in the sharp red and black warmup that Michael Jordan made famous" (The Providence Journal, November 11, 1994); "Around 250-thousand fans, decked out in red and black, showed up to catch a glimpse of the team." (States News Briefs, June 19, 1996); "This is crazy, the way everyone wants to see us . . . I see red and black all over the country, Michael's shirt all over the land." (Chicago Sun-Times, January 22, 1996); "Matter of fact, during one timeout a spectator counted 21 youngsters wearing Reggie Miller's No. 31 jersey and only three wearing Michael Jordan's red and black jersey with the famous No. 23." (The Indianapolis News, February 19, 1996); "Michael was decked out in the red and black of the Chicago Bulls, complete with a No. 23 and the name 'Jordan' on the back of his jersey." (The Associated Press, March 28, 1996, AM cycle); "the jubilant people clad in red and black around him" (The New York Times, May 15, 1996); "Chicago needs to pony up whatever it takes to keep Jordan in black and red." (Chicago Tribune, May 25, 1996); "Can anybody really imagine the league without its red-and-black showpiece?" (Sports Illustrated, March 10, 1997); "give the men in red-and-black shorts credit" (The Boston Globe, March 12, 1997); "But anecdotally I can confirm that number 23 in red, white and black is an ubiquitous sight around the world." (Chicago Sun-Times, July 24, 1998).



b. Los Angeles Lakers - "purple and gold" (Pls.' Ex. 13)

"'Let me show you my tan lines,' Magic said, laughing as he pulled his famous gold-and-purple No. 32 jersey out of his trunks" (The Orange County Register, October 17, 1990); "You will recognize the purple and gold jerseys, the begoggled James Worthy, the incomparable Magic Johnson." (The San Diego Union-Tribune, October 24, 1990); "Ghosts of a lot of bad local memories, dressed in purple and gold, rode triumphant more" (Los Angeles Times, January 4, 1991); "The purple and gold need a lot more Green." (The Orange County Register, May 24, 1991); "Who are the phonies in purple and gold?" (The Washington Times, June 10, 1991); "a Los Angeles Laker gold-and-purple tie" (Chicago Tribune, July 12, 1991); "And as long as Magic Johnson wears purple and gold, don't sell the Lakers short, either." (The Associated Press, October 27, 1991, BC cycle); "They still win and wear purple and gold and play playoff-caliber basketball." (Orlando Sentinel Tribune, November 26, 1991); "One Magic Johnson fan is saluting the former Laker in her own special way. Needlepoint artist Lexi Schwartz is stitching a purple and gold picture with the words 'I have the courage.' She plans to send it to Magic." (Los Angeles Times, December 12, 1991); "They captivated basketball for a decade: one in Laker purple and gold, the other in Celtic green." (U.P.I., June 29, 1992); "And in his right hand was a large shopping bag that contained a blanket for his bed -- purple and gold and bearing the logo of the Los Angeles Lakers." (The Houston Chronicle, November 6, 1992); "just to see Magic Johnson, Byron Scott and the others in the purple and gold." (The Orange County Register, December 29, 1992); "'I grew up bleeding purple and gold,' said Miner" (The New York Times, December 29, 1992); "For hoop fans craving excitement, L.A. became a purple and gold Shangri-la." (Sport, July 1993); "Everyone else makes an announcement. With the purple and gold, you get surprises." (St. Louis Post-Dispatch, March 27, 1994); "The two teams hooked up in the fast-break lanes of the open court -- the first time in four years that there were streaks of purple and gold in the building instead of the walk-don't-run impostors" (The San Francisco Chronicle, April 13, 1994); "He is a Los Angeles

Lakers lifer, his sentiments and unwavering blend of purple and gold." (The Atlanta Journal and Constitution, June 28, 1994); "Kareem Abdul-Jabbar's Los Angeles Laker warmup jacket, purple with gold trim." (St. Louis Post-Dispatch, July 24, 1994); "Abdul-Jabbar hasn't worn Laker purple and gold for five years" (St. Louis Post-Dispatch, July 24, 1994); "The huge purple-and-gold No. 32 will still hang on the Forum wall, but Earvin 'Magic' Johnson will officially unretire that number tonight." (The Press-Enterprise, January 30, 1996); "On Friday night, Johnson was wearing the gold and purple uniform of the Los Angeles Lakers and Dunleavy was still wearing a suit" (The Associated Press, March 16, 1996, PM cycle); "former Laker Magic Johnson said he might end his brief retirement and join O'Neal in purple and gold in late January." (The Atlanta Journal and Constitution, July 20, 1996).

c. Boston Celtics - "Celtic green" or "green and white"  
(Pls.' Ex. 14):

"Robert Parish has been wearing the storied Boston Celtic green for only three months" (U.P.I., December 21, 1980); "Whooping, chanting and wearing a sea of Celtic green" (The Associated Press, May 18, 1981, AM cycle); "The crowd was liberally sprinkled with Celtic Green" (The Associated Press, May 18, 1981); "how much Celtic green will it take to keep Larry Bird satisfied now?" (The Washington Post, July 22, 1983); "Hundreds of fans, many wearing Celtic green" (The Associated Press, June 25, 1984, PM cycle); "All-Star forward Bird -- and anyone else who ever wore Celtic green -- took a back seat to McHale." (U.P.I., March 4, 1985); "Veteran center Bill Walton... will wear Boston Celtics green" (U.P.I., September 6, 1985); "Wearing Celtic green and white hats on the steps of the Capitol" (States News Service, May 22, 1986); "Fans wearing the Celtic green screamed, danced and high-fived each other" (The Associated Press, June 8, 1986); "Downtown Boston was a sea of green today" (Reuters, June 11, 1986); "Every time he turned around, somebody seemed to be shoving something leaf-green or forest-green or money-green at him, whether it was a green felt cap or a green silky jacket or a green nylon bag. Make that

Boston Celtics green." (The Washington Post, June 18, 1986); "the possibility of veteran Antoine Carr wearing Celtic green." (The Associated Press, October 27, 1987); "wearing Boston Celtic green" (The Associated Press, February 24, 1988); "dressed in Boston Celtic green." (The New York Times, March 5, 1989); "the blond-haired figure, outfitted in traditional Boston Celtic green and white, moved across the television screen" (The Sporting News, April 17, 1989); "Eighteen different players wore Celtic green that year" (The New York Times, March 27, 1990); "Celtics green and Lakers purple and gold." (The Associated Press, May 26, 1990, AM cycle); "The last time there was no green or purple and gold in the finals was 1979" (Associated Press, May 26, 1990); "They captivated basketball fans for a decade: one in Laker purple and gold, the other in Celtic green." (United Press International, June 29, 1992); "Remember how you so hated him . . . when he wore Boston Celtics green" (Houston Chronicle, May 9, 1994).

d. Phoenix Suns - "purple and orange" (Pls.' Ex. 15):

"Chambers labors in the relatively obscure purple and orange of the Phoenix Suns, two time zones removed from the East Coast media centers." (Chicago Tribune, March 4, 1990); "'I'm really a purple-and-orange guy,' Colangelo said, referring to the Suns' colors." (The Associated Press, September 12, 1991); "Fans are painting the town purple and orange." (Philadelphia Inquirer, June 9, 1993); "the Suns, the sun-tanned, purple-clad Phoenix Suns Dancers and a sea of purple-and-orange 'Beat Da Bulls' banners handed out at arena entrances" (Chicago Tribune, June 10, 1993); "Hard-core Phoenix Suns fans imitate Pavlov's salivating canines when the team's starting-lineup introduction music blasts from television sets nationwide, accompanied by dazzling purple and orange graphics." (The Business Journal-Phoenix & the Valley of the Sun, June 11, 1993); "His horns are painted orange and purple, and he has 'Go Suns' painted on his rear end. . . . T.W. Lewis, the home builder, has decorated a spare bedroom in . . . purple and orange colors and Suns decor." (The Arizona Republic, June 18, 1993); "So it might be awhile before all the fans scrape the hand-painted

'Go Suns' signs off their car windows and purple and orange paint off scores of shop windows." (The Associated Press, June 22, 1993); "It's purple, It's orange. It's America West Airlines' newest Boeing 757 - and it's hard to miss, sporting the team colors of the Phoenix Suns from nose to tail." (The Arizona Republic, May 17, 1994); "More than 400 Phoenix Suns fans, many dressed in the National Basketball Association team's colors of purple, orange and black" (The Commercial Appeal, February 12, 1995); "Business people leasing luxury suites at America West Arena to watch the purple and orange of the Phoenix Suns, also see lots of green." (Business Journal-Phoenix & the Valley of the Sun, November 3, 1995).

e. Orlando Magic - "pinstripes"/"blue, silver and black"  
(Pls.' Ex. 16):

"With power forwards . . . already in the Magic blue, black and silver, the emphasis in the college pool could have been at center." (Gannett News Service, June 24, 1989); "Ultimately, how the silver, blue and black-clad Magic perform on the court will have the greatest bearing on the franchise's long-term success." (The New York Times, October 9, 1989); "The blue, black and silver logo of the Orlando Magic needs redoing at the Orlando Arena" (Orlando Sentinel Tribune, June 15, 1990); "Now, the firm is adding two colors to its blue-blood palette: silver and black. On Friday the firm authorized its first Orlando Magic casual day." (The Orlando Sentinel, May 29, 1995); "There's only one fashion in Orlando right now: anything in blue, silver and black with the word 'Magic' on it." (The Orlando Sentinel, June 8, 1995); "Even those who don't know a slam dunk from a jump shot have caught the Magic fever and are sporting the home-team colors - known officially as Electric Blue, Quick Silver and Magic Black." (The Orlando Sentinel, June 8, 1995); "There is a cheap, quick way to ride out the remaining playoff games in true blue, black and silver style" (The Orlando Sentinel, June 8, 1995); "Key colors include blue, black, silver, white and an orangey 'basketball brown.'" (The Orlando Sentinel, June 8, 1995); "The simplest design with instant recognition in Magic circles is a silver star outline in blue and/or

black." (The Orlando Sentinel, June 8, 1995); "Now pull on black pants or blue jeans and sneakers (preferably silver), and you're ready to let the world know that you believe in Magic." (The Orlando Sentinel, June 8, 1995); "Seeing O'Neal in a royal purple and gold uniform instead of the Orlando Magic's pinstripes might take some getting used to." (USA Today, October 30, 1996); "I would much rather have Shaquille in pinstripes than in Laker purple and gold" (The Associated Press, December 7, 1996); "Only those in Magic pinstripes seem to be considering the former while just about all others on the basketball planet are fully expecting the latter." (The Houston Chronicle, June 11, 1995); "And while Webber (like Bradley and the rest) is awful coy about his preference -- if he can't be a Laker, he'll go anywhere -- he kind of likes the idea of wearing black pinstripes." (The Hartford Courant, June 30, 1993); "They believe it may take \$8 million to \$11 million a season to keep Shaq in pinstripes." (Orlando Sentinel Tribune, August 11, 1995); "Magic officials have been meticulously gathering film clips of the atrocities committed against O'Neal since he first pulled on his pinstripe jersey three seasons ago" (The Boston Globe, November 10, 1995).

f. Dallas Mavericks - "blue and green" (Pls. Ex. 17):

"Steve Alford, the role model of America's geographic breadbasket, came home Wednesday night, wearing the green and blue of the Dallas Mavericks." (Chicago Tribune, December 25, 1987); "Dallas Mavericks fans are painting their faces - as well as the town - in blue and green to celebrate the team's longest-ever march through the NBA playoffs." (The Associated Press, May 20, 1988); "He said his shoe manufacturer has not yet sent him shoes to match the Mavs' blue and green." (The Courier-Journal - Louisville, KY, March 8, 1989); "You've got to feel sorry for Lever. He was a great basketball player before he donned the blue and green." (The Dallas Morning News, October 15, 1992); "Wednesday's game, witnessed by about 5,000 fans and 12,500 empty seats, was a test for true blue and green die-hards." (The Associated Press, February 11, 1993); "The discipline of their competitive days may have kept them from going nuts

as they kept pumping up the little blue-and-green balls (Mavericks colors, of course) and tossing them into a shower stall until they were stacked chin-high." (The Dallas Morning News, April 29, 1993); "The green and blue hues of Mashburn's nouveau chapeau clashed with his charcoal suit and black-and-burgundy tie. But he couldn't have cared less." (The Courier-Journal - Louisville, KY, July 1, 1993); "By the time Jackson donned the blue and green last season, the playoff schedule nearly was in ink." (The Dallas Morning News, August 10, 1993); "Could even the greatest players in history have salvaged the team's 1992-93 season had they worn the proud blue and green?" (The Orange County Register, December 19, 1993); "All things considered, the Bullets know which team will be feeling the most pressure tonight. Hint: It won't be the one wearing green and blue." (The Washington Times, January 27, 1994); "There was a time, of course, when Roy Tarpley was absolutely the best basketball player who ever wore the blue and green." (The Dallas Morning News, February 24, 1994); "The green and blue Mavericks logo required 77 revisions. And he's 'still unhappy with the uniforms.'" (The Dallas Morning News, March 5, 1994).

g. Charlotte Hornets - "purple and teal" (Pls.' Ex. 18)

"The expansion Charlotte Hornets unveiled the NBA's first designer uniforms, with pleated pants, collars on warm-ups and multi-colored vertical stripes in a sea of teal." (U.P.I., July 21, 1988); "Merchandise bearing the purple-and-teal insignia of the Charlotte Hornets has infiltrated local department and sporting-goods stores." (The Business Journal-Charlotte, October 31, 1988); "Alonzo Mourning is confident he'll soon be wearing the teal colors of the Charlotte Hornets" (The Associated Press, June 9, 1992); "The Hornets' teal and purple colors are popular" (Amusement Business, December 7, 1992); "Together, the two even managed to make teal look like a threatening color." (The Boston Globe, March 15, 1993); "'Let's have a Boston Teal Party,' referring to the Hornets' purple and teal colors." (National Public Radio, April 29, 1993); "The Charlotte Hornets, founded in 1988 as the standard-bearers for the

color teal, play their first playoff game" (The Boston Globe, April 29, 1993); "Charlotte virtually invented the color teal, a sort of aquamarine hue." (The Boston Globe, April 29, 1993); "His brightly-painted teal and purple crutches were a clue that he's not bored with Charlotte's team colors." (The Associated Press, May 12, 1993, PM cycle); "Trendy. Teal. Terrific." (The Atlanta Journal and Constitution, May 17, 1993); "Once a man of steal, he returns a man of teal." (The Hartford Courant, October 21, 1993); "Seemingly overnight, the Charlotte Hornets have gone from an expansion team wearing curious teal uniforms to a team many perfectly rational people think will contend this year for the Eastern Conference title in the NBA." (The Washington Post, November 24, 1993); "Now the last standing member of the Big Three will finish his career in teal instead of Celtic green." (The Boston Globe, August 4, 1994); "You know teal. The Charlotte Hornets." (The Vancouver Sun, August 12, 1994).

h. New York Knicks - "blue and orange" (Pls.' Ex. 19)

"When Jordan goes nuts, he does things such as kick the blue and orange out of the New York Knicks" (The Atlanta Journal and Constitution, February 7, 1997); "Oakley needs five minutes to become the fifth player in Knicks history to play 20,000 minutes in the orange and blue." (Gannett News Service, February 12, 1997); "But with the Knicks in town, motivation will be dressed in blue and orange." (Sun-Sentinel, April 12, 1997); "he has lately taken to wearing New York Knicks' orange and blue on the off chance we might miss him there" (Chicago Sun-Times, May 11, 1997); "He must not have seen the familiar blue and orange his opponents were wearing." (Asbury Park Press - Neptune, NJ, January 3, 1998); "the forever-in Knicks' blue and orange on." (Asbury Park Press - Neptune, NJ, January 3, 1998); "One thing the Knicks definitely would like to have is Stoudamire in a blue-and-orange New York uniform." (The Toronto Sun, January 18, 1998); "Jordan simply drew a foul in a sea of muscle and orange and blue." (Austin American-Statesman, January 11, 1998); "We could understand the blue-and-orange-dyed Lee ragging even his protege where the Knicks were

concerned. But Washington?" (The Milwaukee Journal Sentinel February 2, 1998); "Tim Hardaway headed toward the gymnasium exit after practice Wednesday dressed for the 85-degree weather, wearing blue sneakers, orange shorts and a T-shirt with orange and blue trim." (The Associated Press, April 22, 1998); "The New York Knicks will try to surround Hardaway with orange and blue when their first-round playoff series against the Miami Heat begins" (Associated Press, April 22, 1998).

i. Houston Rockets - "red and gold" (Pls.' Ex. 20)

"Dallas hardly blinked an eye at the sight of Rockets red and gold in 1988." (The Houston Chronicle, April 29, 1993); "The toothy smile works like it always has. And the uniform is red and gold." (The Houston Chronicle, October 9, 1993); "Instead, this Sunshine State collection wears the red and gold of the Houston Rockets." (The Orlando Sentinel, June 7, 1994); "Some say the popularity of Rockets' red and gold is at an all-time high." (The Houston Business Journal, June 10, 1994); "Whatever it takes to blow a lead, it's a big can-do for the red and gold" (The Arizona Republic, June 13, 1994); "Answering the oft-heard question of what do preachers wear under their robes, he took off his. You guessed it. A red-and-gold Rockets T-shirt." (The Houston Post, June 28, 1994); "We have no control over the decision of the image-makers elsewhere. Yet the lessons taught us by our civic leaders in red and gold can be applied to all of us." (The Houston Post, June 29, 1994); "What's red and gold all over and can't settle down?" (The Houston Chronicle, June 3, 1995); "they were each dressed in matching Rockets jerseys bearing the number 34 of Hakeem Olajuwon and red-and-gold goggles." (The Houston Chronicle, June 13, 1995)

2. Plaintiff NFL's Trademarks

32. Plaintiff NFL claims ownership of the following trademarks:



- (a) team names;
- (b) team nicknames;
- (c) game uniform designs;
- (d) helmet logos;
- (e) team colors; and
- (f) other identifying names, symbols, designs and slogans.

(Dep. of Colin Hagen at 14.)

33. Plaintiff NFL does not register all of its trademarks. (Tr. at 171.) Plaintiff NFL enforces its unregistered marks under common law. (Id.)

34. Plaintiff NFL registered some of its trademarks for the following product markets:

- (a) entertainment services in the form of professional football games in International Class 41; and,

- (b) clothing items in International Class 25.

(Pls.' Exs. 22-38.) Plaintiff NFL does not register all of its trademarks. (Tr. at 171.) Plaintiff NFL enforces its unregistered trademarks under common law. (Id.)

35. Plaintiff NFL registered the following trademarks for the class of goods that covers trading cards:

- (a) Buffalo Bills Helmet Design (Pls.' Ex. 21);

- (b) Baltimore/Indianapolis Colts Helmet Design (Pls.' Ex. 22);